

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In re:	)	MPC 15-0203	MPC 110-0803
	)	MPC 208-1003	MPC 163-0803
David S. Chase,	)	MPC 148-0803	MPD 126-0803
	)	MPC 106-0803	MPC 209-1003
Respondent.	)	MPC 140-0803	MPC 89-0703
	)	MPC 122-0803	MPC 90-0703
	)		MPC 87-0703

**RESPONDENT'S MOTION TO STAY HEARING PENDING
CONCLUSION OF FEDERAL CRIMINAL CASE**

Respondent, David S. Chase, M.D., through counsel, hereby requests the Board to stay the merits hearing in this matter pending the conclusion of his imminent federal criminal case. In support of his Motion, Dr. Chase relies upon the following incorporated memorandum of law.

MEMORANDUM

I. Introduction.

Since the summer of 2003, Dr. Chase has been defending himself against a federal criminal investigation at the same time he has been contesting the administrative charges before the Medical Practice Board. The Vermont Attorney General's office is actively participating in both the administrative and criminal prosecutions of Dr. Chase.¹ Federal and state criminal prosecutors have been utilizing the information gained through discovery in this administrative matter to further their criminal investigation of Dr. Chase. They have also been utilizing the federal grand jury, which is empowered to investigate possible federal crimes, to subpoena the individuals that Dr. Chase has named as expert and fact witnesses in this matter and have

¹ Assistant Attorney General Joe Winn is prosecuting this action before the Board, and Assistant Attorney General Linda Purdy has been cross-designated as an Assistant United States Attorney to represent the State of Vermont in the federal criminal investigation and prosecution of Dr. Chase.

interrogated those witnesses in secret before the grand jury without Dr. Chase or his lawyers present. Through these mechanisms, the State of Vermont has cooperated extensively with the United States Attorney's Office to undermine Dr. Chase's defense in the anticipated federal criminal action against him.

During the past few weeks, Dr. Chase has determined that a federal criminal indictment will be filed against him in the very near future. That indictment will address the exact same conduct that is the subject of the State's Superseding Specification of Charges in this matter. Because it would be nearly impossible to simultaneously defend against a federal criminal indictment and the administrative charges in this proceeding, and because of the prejudice that will ensue from the return of an indictment contemporaneously with the administrative proceeding, Dr. Chase's attorneys requested that the United States Attorneys' Office ("USAO") defer its investigation and indictment of Dr. Chase until after the Medical Practice Board hearing has concluded in mid-October. The USAO flatly refused Dr. Chase's request and, in fact, indicated that it could not delay presenting evidence to its grand jury past September 7, 2004. Taking into account this refusal and all of the other available information, Dr. Chase and his attorneys have now concluded that a federal indictment is imminent, and will likely be filed before the commencement of the merits hearing in this matter.

Dr. Chase and the State agree that, in the event an indictment is issued, this Board should stay the merits hearing in this matter until the conclusion of the federal criminal case. Throughout that time, Dr. Chase will remain subject to the stipulated order through which he has agreed not to practice medicine.

Although the State is constrained to withhold its consent until a formal indictment is issued, the great weight of legal authority from state and federal courts around the country

dictates that, in light of the uncontested immanence of the indictment, the Board should act now to stay the merits hearing, thereby protecting Dr. Chase's crucial constitutional rights, saving the parties, the witnesses, and the Board considerable resources, and promoting the most just and efficient resolution of both this case and the impending criminal matter. To do otherwise would jeopardize Dr. Chase's Fifth Amendment rights and his right to speedy criminal trial. It would also improperly provide federal and state criminal prosecutors with a road map of his entire defense in the criminal case and prejudicially provide an opportunity to attack and shape witness testimony before trial, thereby severely compromising his defense in the criminal action. Finally, to proceed with the Board hearing at this point would waste the resources of all involved in both actions: If Dr. Chase is convicted in the criminal case, no Board hearing will be necessary because he will automatically be considered guilty of unprofessional conduct; if he is acquitted, the State may well choose not to proceed, or to proceed differently, with this license revocation action. In short, all of the factors this Board must consider cut strongly in favor of granting Dr. Chase the stay he requests, even before the USAO's indictment is filed.

Although the expected indictment has not yet been filed, Dr. Chase brings his Motion to Stay before the Board at this time in order to minimize the inconvenience to the Board, the State, and the witnesses that would accompany a Motion to Stay on the very eve of the merits hearing. Dr. Chase could not have credibly brought his Motion prior to this date because, until very recently, he could not represent to the Board that an indictment was both inevitable and imminent. Instead, he had worked hard to conclude the Board hearing before any possible criminal action was commenced. Because that now appears impossible, and a criminal action inevitable, the Board should stay this case.

II. Factual Background.

A. The USAO And The Vermont Attorney General's Office Have Been Utilizing The Board's Discovery Process To Further Its Criminal Investigation.

For the past year, the USAO has been investigating the precise facts that are the subject of this Board proceeding. In the summer of 2003, the USAO convened a federal grand jury to help it perform its investigation. A grand jury operates under the virtually complete direction of the federal prosecutor and has the power to subpoena witnesses to appear and testify before it. Once before the grand jury, a witness is interrogated in secret by federal prosecutors. No other attorneys or parties, including the target of the federal investigation, are allowed to be present. The courts have almost no authority to supervise the prosecutors before the grand jury, and those prosecutors are free to present to the grand jury unconstitutionally secured evidence, to interrogate witnesses without affording them counsel, to ignore the Double Jeopardy Clause, to rely on hearsay, to refuse to present exculpatory evidence, and to secretly interrogate witnesses in an aggressive fashion. United States v. Williams, 504 U.S. 36, 48-50 (1992).

Upon commencing its investigation, the USAO sought and received the help of the State of Vermont in building its criminal case against Dr. Chase. First, it cross-designated Vermont Assistant Attorney General ("AAG") Linda Purdy as a special Assistant United States Attorney so that she could participate in the federal investigation on behalf of the State of Vermont. As a result, the federal criminal investigation and impending criminal prosecution of Dr. Chase is being conducted by the very same government and the very same Attorney General's Office that is prosecuting him before this Board.

Second, in furtherance of the criminal investigation, the USAO received deposition transcripts and other discovery materials generated in this Board action from Assistant Attorney General Joseph Winn. AAG Winn has provided his colleague AAG Purdy and the USAO with

hundreds, perhaps thousands, of pages of deposition transcripts and other documents generated in this Board matter. Through this mechanism, the AAG prosecuting this Board action has materially furthered the criminal investigation being conducted by his AAG co-worker and the federal government. The federal and state criminal prosecutors, in turn, have gained significant strategic advantages that will allow them to attack Dr. Chase's defense to the impending criminal charges.

In addition, the USAO has subpoenaed most of the witnesses identified by the State and Dr. Chase in this matter to testify before the federal grand jury. Nearly every doctor and present or former staff member of Dr. Chase's office, and a number of the complaining patients, have been subpoenaed to be interrogated before the grand jury. Through all of these mechanisms, state and federal criminal prosecutors have utilized this Board action in order to gather evidence to use against Dr. Chase in a criminal prosecution.

B. Last Week, The Government Subpoenaed Dr. Chase's Expert Witness To Testify Before The Grand Jury And Secretly Interrogated Him For Over Two Hours.

State and federal criminal prosecutors have even gone so far as to secretly interrogate one of the expert witnesses that Dr. Chase has retained to aid him in his defense of the Board action and related cases. On December 10, 2003, Dr. Arthur Ginsburg, a biophysicist specializing in vision sciences, was retained to assist Dr. Chase's attorneys by consulting with them in preparing and conducting a defense for Dr. Chase and also potentially by providing expert testimony with respect to certain aspects of that defense. He has assisted Dr. Chase's attorneys in evaluating numerous aspects of this case and has educated them on the science and medicine of vision and,

in particular, contrast sensitivity testing (“CST”).² As a consultant, Dr. Ginsburg has assisted in evaluating and formulating litigation strategy.

On January 30, 2004, Dr. Ginsburg was identified by Dr. Chase as a potential testifying expert in the Board matter. On June 23, 2004, a report prepared by Dr. Ginsburg was disclosed to the State, and on June 25, 2004, Dr. Ginsburg was deposed by AAG Winn in the Board matter. The State provided Dr. Ginsburg’s report and deposition transcript to the federal government. On July 19, 2004, the USAO signed a grand jury subpoena, later served on Dr. Ginsburg in California, that required him to appear and testify on August 10, 2004, before a grand jury sitting in Burlington, Vermont.

At the time the subpoena was issued by the USAO, the merits hearing in the Medical Practice Board proceeding was scheduled to be held between August 2 and 16, 2004. Thus, the USAO had subpoenaed Dr. Ginsburg to appear before the grand jury at the precise time he was to be participating in and testifying in connection with Dr. Chase’s defense in this Board action. The result would have been an extreme disruption in Dr. Chase’s hearing preparation and presentation. However, between the subpoena’s issuance and its service on Dr. Ginsburg, the Medical Practice Board Hearing was postponed.

Dr. Chase’s attorneys received their first inkling of the subpoena purely by fortuity late in the afternoon of August 5. Thereafter, Dr. Chase’s attorneys had a number of conversations with the USAO stating their objections to the subpoena on the grounds that the subpoena constituted a misuse of the grand jury to obtain unauthorized expert discovery and that the USAO’s questioning of Dr. Ginsburg would improperly access information protected by privileges. Dr. Chase’s attorneys also asked the USAO to postpone the entire issue, and therefore the conclusion

² Contrast sensitivity is defined, in the simplest terms, as the ability of the visual system to distinguish between objects of various contrasts. CST refers to the testing of that ability.

of its investigation, until after the conclusion of the Board hearings, because litigating the issue at that time interfered with the extensive preparation necessary to present effectively Dr. Chase's defense in Board proceedings.

On August 25, 2004, the USAO rejected the request to postpone Dr. Ginsburg's grand jury appearance and insisted on moving forward with Dr. Ginsburg's grand jury testimony on September 7th. In response to the USAO's position, Dr. Chase had no choice but to spend precious time and resources litigating the propriety of the grand jury's subpoena, just weeks before his Board hearing was to begin. All told, Dr. Chase's attorneys spent scores of hours attempting to prevent, or at least delay, Dr. Ginsburg's grand jury testimony until after the Board action, but they were unsuccessful.

On September 7, 2004, Dr. Ginsburg was interrogated by federal criminal prosecutors in secret before the grand jury. Neither Dr. Chase nor his attorneys were allowed to attend. The government's private interrogation of Dr. Chase's expert lasted over two hours. According to the witness, the interrogation was aggressive and confrontational.

C. A Federal Criminal Indictment Is Imminent And Will Implicate The Same Conduct That Is At Issue In This Proceeding.

Based on all of the facts and circumstances available, it is now virtually certain that a federal criminal indictment against Dr. Chase is inevitable and imminent. The Federal Rules of Criminal Procedure prohibit the USAO from providing Dr. Chase and his attorneys with certain information regarding the activities of the federal grand jury. See Fed. R. Crim. P. 6. The USAO has scrupulously abided by its secrecy obligations in this regard. Nonetheless, in light of all of the available information, it is now a near certainty that Dr. Chase will be indicted in the coming days or, at most, the coming week or two. Witnesses recently called to meet with federal prosecutors and to testify before the grand jury have been informed that they should expect to be

called as witnesses in a criminal trial involving Dr. Chase. The USAO has refused Dr. Chase's requests to delay the conclusion of its grand jury investigation until after the merits hearing in this matter. Importantly, the USAO represented to Dr. Chase's attorneys and to the United States District Court that Dr. Ginsburg's grand jury testimony could not be delayed by even the few days necessary for Dr. Chase to seek an emergency appeal to challenge the propriety of their interrogation of Dr. Ginsburg. The only rational conclusion that can be drawn from these facts is that an indictment is imminent.

The charges contained in the indictment will stem from the same conduct that is the subject of this Board action. The grand jury and the federal and state criminal prosecutors have interviewed and examined the exact same witnesses who will be called to testify in this case and have questioned them regarding the precise issues existing in this litigation. They have examined the very documents and medical records that form the basis of this action. Indeed, the criminal prosecutors have actively sought all of the discovery information produced in this case. The impending federal criminal charges will center on allegations that Dr. Chase engaged in a practice of recommending and performing cataract surgery that was not medically justified and associated record-keeping improprieties, just as the State has alleged here.

III. Discussion.

State and federal caselaw from around the country dictates that the merits hearing in this matter be temporarily stayed until the conclusion of Dr. Chase's impending criminal case. The State agrees that in the event of an indictment, Dr. Chase's requested stay is proper. The State is constrained to withhold its consent until that time. Nonetheless, even absent a formal indictment, all of the factors this Board must consider in evaluating Dr. Chase's request point in favor of staying these proceedings until the criminal case is complete, thereby protecting Dr.

Chase's constitutional rights in the criminal case, preventing state and federal prosecutors from further using this proceeding to gain an unfair advantage at the criminal trial, and saving the parties, the Board, and the witnesses from potentially unnecessary expenditure of limited resources.

A. This Board May Stay Proceedings Pending The Outcome Of The Criminal Case.

"The civil and regulatory laws . . . frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous." SEC v. Dresser Industries, Inc., 628 F.2d 1368, 1374 (D.C. Cir. 1980) (en banc). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254-55 (1936). In the event of a parallel criminal proceeding, "a court may decide to stay civil proceedings . . . 'when the interests of justice seem to require such action, sometimes at the request of the prosecution, sometimes at the requests of the defense.'" Dresser, 628 F.2d at 1375.

"[T]he strongest case for delaying civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter." Id. "The non-criminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case." Id. at 1375-76. Thus, "absent some sort of extraordinary situation, [tribunals] should exercise their discretion to stay civil . . . proceedings pending completion of related criminal proceedings against the claimants." United States v. All Assets of Statewide

Auto Parts, Inc., 971 F.2d 896, 905 (2d Cir. 1992)(considering stay of civil forfeiture action pending related criminal matter).

B. It Is Immaterial Whether An Indictment Has Already Issued Or Is Instead Imminent.

The State of Vermont agrees that when the federal indictment issues against Dr. Chase, a stay of these proceedings is appropriate. As set forth above, Dr. Chase anticipates that he will be indicted in the coming days. In light of the USAO's prior refusal to delay the conclusion of its investigation until after the Board proceeding, and its representations to the federal court that it could not delay Dr. Ginsburg's grand jury testimony for even a few days, Dr. Chase has now urged the USAO to issue its indictment as soon as possible in order to provide certainty to the parties and the Board in this matter. However, Dr. Chase has no control over exactly when the indictment will be issued, and the USAO is constrained by its secrecy obligations from telling Dr. Chase exactly when that will occur. Rather than wait until the USAO issues its indictment, which could occur as early as tomorrow or on the very eve of the Board hearing in this matter, Dr. Chase has decided to bring his request for stay to the Board's attention at this time. In so doing, he hopes to minimize the inconvenience and expense to the Board, the parties, and the witnesses.

Moreover, caselaw makes clear that, in a case such as this, it is immaterial whether an indictment has actually issued or is instead imminent. All of the lawyers and witnesses connected to this matter and at liberty to discuss it openly acknowledge that Dr. Chase is the target of the grand jury's investigation, that the grand jury's investigation has neared or reached its end, and that Dr. Chase will be charged with federal crimes arising out of the same facts at issue in this Board case. This is no longer a case where a criminal prosecution is "merely speculative." King v. Olympic Pipeline Co., 16 P.3d 45, 53 (Wash. Ct. App. 2001) (collecting

cases from state and federal courts regarding factors court must consider in granting stay). Instead, “there seems to be no serious dispute that [Respondent is] in genuine jeopardy of criminal liability under federal . . . laws.” Id. “Despite the absence of an indictment, [Respondent’s] jeopardy is neither fanciful nor imaginary.” Id. at 56. Thus, even absent a formal indictment, this Board is required to analyze all of the factors bearing upon the requested stay. Failure to do so constitutes reversible error. Id. at 54 (reversing lower court decision denying stay, and requiring analysis of factors regarding stay, where indictment had not yet issued but was expected); see also Kashi, 790 F.2d at 1057 (even without indictment, lower court granted stay of civil trial during pending grand jury investigation “until the [USAO] announced that it had declined prosecution”). As demonstrated below, all of the relevant factors as identified by state and federal courts weigh heavily in favor of staying the Board hearing in this matter until the conclusion of the criminal case.

C. Absent A Stay, Dr. Chase’s Fifth Amendment Rights Will Be Jeopardized.

The first and most important factor that a tribunal must consider in staying a civil action is that “the noncriminal proceeding, if not deferred, might undermining the party’s Fifth Amendment privilege against self-incrimination.” Dresser, 628 F.2d at 1376. Simply put, faced with the prospect of an impending criminal trial, a Respondent in a Board proceeding cannot testify in his own defense without making that testimony available to prosecutors to use against him in the criminal case.

The dangers posed by this dilemma are twofold and compromise both the Respondent’s constitutional rights and the Board’s truth-seeking function. First, “a parallel civil proceeding can vitiate the protections afforded the accused in the criminal proceeding if the prosecutor can use information obtained from him through . . . testimony elicited in the civil litigation.” King,

16 P.3d at 52 (collecting cases). Second, “the pendency of a parallel criminal proceeding can impede the search for truth in the civil proceeding if the accused resists disclosure and asserts his privilege against self-incrimination and thereby conceals important evidence.” Id. Simply put, denial of a stay would do great damage to both Dr. Chase’s constitutional rights and this Board’s ability to discern the truth based on all of the available evidence from the State and Dr. Chase. In order to protect Dr. Chase’s constitutional rights and the legitimacy of the Board’s ultimate determination in this matter, the Board should grant a stay on this ground alone.

D. Absent A Stay, Dr. Chase’s Sixth Amendment Right To A Speedy Criminal Trial Will Be Destroyed.

The United States Constitution also guarantees Dr. Chase a right to a speedy trial in the federal criminal action. See U.S. Const. Amend. VI. Because there is an “inevitable diversion of resources in simultaneous defense of civil and criminal actions,” King, 16 P.3d at 58, it will be impossible for Dr. Chase and his defense team to quickly and adequately prepare for a criminal trial while trying this administrative case over the course of the next four weeks—an all-consuming effort. Similarly, the unavoidable burden of litigating the criminal case will severely compromise the ability of Dr. Chase’s defense team to adequately prepare and present his defense in this action. Indeed, even prior to indictment, Dr. Chase’s lawyers have been forced to spend much of the past two weeks litigating grand jury-related issues in federal court, even as they should be free to prepare to defend Dr. Chase’s licensing proceeding. If unresolved, the unavoidable result of this conflict will be the destruction of Dr. Chase’s Sixth Amendment right to a speedy trial in the criminal case and a severe restriction on his ability to adequately defend himself against the Superseding Specification of Charges in this action.

E. Absent A Stay, Criminal Prosecutors Will Be Able To Impermissibly Expand Their Discovery And Scrutinize The Basis Of Dr. Chase's Defense.

The next factor the Board must consider is whether denial of a stay would “expand rights of criminal discovery beyond [acceptable] limits . . . [and] expose the basis of the defense to the prosecution in advance of criminal trial.” Dresser, 628 F.2d at 1376. In a federal criminal case, the government is granted very limited discovery from the defendant. The defendant is allowed to formulate his defense in relative privacy, free from intrusions by the government. To date, federal and state prosecutors have aggressively attempted to use this proceeding to bolster their attack on Dr. Chase's defense in the criminal action, which will overlap almost entirely with the subject matter of this Board action. They have sought and received untold pages of depositions and other documents from the AAG prosecuting this case. They have utilized Dr. Chase's witness list and deposition questions in this matter as a road map to their own grand jury investigation, subpoenaing and interrogating nearly every witness whom Dr. Chase has chosen to depose in this case. The USAO has even subpoenaed Dr. Chase's own retained expert witness, Dr. Arthur Ginsburg, to testify before the grand jury. Without question, the criminal prosecutors are seeking to exploit every advantage that the pendency of this proceeding makes available to them.

As a result of these actions, the criminal prosecutors have already previewed Dr. Chase's defense in the Board and criminal actions. However, those efforts have been limited by the fact that Dr. Chase has not yet been required to lay out his entire defense before the Board. If Dr. Chase is forced to present his defense prior to the conclusion of the criminal case, criminal prosecutors will be given a full-blown tutorial in the intricacies of that defense. They will be able to use the information Dr. Chase presents in order to guide their prosecution, gathering evidence and formulating cross examination in a manner perfectly tailored to counter Dr.

Chase's arguments. The tactical advantage to the government under this scenario is immeasurable, and the prejudice to the criminal defendant insurmountable. As the Second Circuit put it, by trying a civil action and only then a related criminal case, "the state and federal governments could conceivably avail themselves of not two, but *three* bites at the proverbial apple," utilizing the initial civil action as a "test" case and then prosecuting the defendant criminally in federal and state courts. United States v. All Assets of Statewide Auto Parts, Inc., 971 F.2d 896, 905 (2d Cir. 1992). As a result, "absent some sort of extraordinary situation," tribunals should "exercise their discretion to stay civil . . . proceedings pending the completion of related criminal proceedings." Id. "Through such courageous and sensitive application of their discretionary powers, the [civil tribunals] can then ensure that 'due process' remains a reality and is not reduced to a mere encomium." Id.

F. A Stay Will Promote Judicial And Regulatory Efficiency And Decrease Inconvenience To Witnesses.

Of course, in considering Dr. Chase's request for a stay, the Board must also take into account issues of efficiency, both judicial and otherwise. Here, a stay pending resolution of the criminal case will unquestionably promote efficiency in these proceedings. If Dr. Chase is convicted in the criminal case, that conviction will result in an automatic finding that Dr. Chase violated the standards of conduct governing his profession, see 26 V.S.A. § 1354(a)(30), thereby rendering a Board hearing unnecessary. If Dr. Chase is acquitted, that fact will almost certainly have a profound effect on whether and how the State and the Board decide to proceed with this action. Conversely, resolution of this Board action is unlikely to have any effect on whether the criminal case proceeds. See King, 16 P.3d at 56-57 ("where there is substantial overlap, the criminal proceeding may actually benefit the civil proceeding by producing a result that completely resolves the civil liability issues---although the reverse is not true").

In addition, to the extent the criminal case renders a Board proceeding unnecessary or ill-advised, it will decrease the inconvenience to the witnesses—both those identified by the State and by Dr. Chase. See King, 16 P.3d at 59-60 (interests of non-parties to litigation should be taken into account in considering stay). As noted above, criminal prosecutors have subpoenaed most of the witnesses in this matter to testify in connection with their criminal investigation of Dr. Chase. Those witnesses will almost certainly be called to testify at Dr. Chase’s criminal trial. If the Board proceeding goes forward before the criminal proceeding, they will be required to testify at least twice; if the Board proceeding is stayed, their likely further involvement will be limited to testifying at the criminal trial.

It is true that delaying the Board hearing at this date will cause some inconvenience to the Board, the State, Dr. Chase, and the parties’ witnesses—all of whom have been working hard to prepare for a September 21st hearing. But while a stay will always cause some inconvenience and delay, “protection of defendants’ constitutional rights against self-incrimination is the more important consideration.” Dienstag v. Bronsen, 49 F.R.D. 327, 329 (S.D.N.Y. 1970).

G. The State’s Interest In Protecting The Public Will Not Be Compromised.

The State has an interest in protecting the public from unethical doctors and believes that it must prevent Dr. Chase from practicing medicine in order to vindicate this interest. Currently, Dr. Chase is subject to a consent order preventing him from practicing medicine until this Board proceeding is completely resolved. This consent order would remain in effect, and Dr. Chase would continue to refrain from practicing medicine, until after the conclusion of the criminal and Board action. As a result, the State’s perceived interest in preventing Dr. Chase from practicing ophthalmology will not be compromised in any way by the proposed stay. And, as noted above,

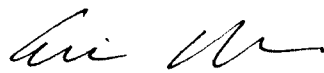
ultimate resolution of the Board action may actually be hastened, rather than delayed, by a stay at this juncture.

III. Conclusion.

All of the factors identified by state and federal courts around the country weigh heavily in favor of granting a stay of the Board hearing in this matter pending resolution of the imminent federal criminal prosecution of Dr. Chase. A stay will protect Dr. Chase's constitutional and other rights while promoting an efficient resolution of all of the regulatory and criminal charges against him. A stay will not prejudice the rights of the State, its witnesses, or the public. Conversely, to move forward with the Board hearing while Dr. Chase faces an imminent federal indictment will vitiate his constitutional rights in the criminal action, severely undermine his defense in federal court, subvert the truth-seeking function of this tribunal by denying it access to important evidence, and result in potentially duplicative litigation. For these reasons and those discussed above, Dr. Chase respectfully requests that the Board stay the merits hearing in this matter pending resolution of the criminal charges against Dr. Chase.

Dated at Burlington, Vermont, this 13th day of September 2004.

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**STATE OF VERMONT
CHITTENDEN COUNTY, SS.**

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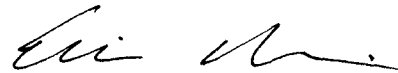
CERTIFICATE OF SERVICE

I, Eric S. Miller, counsel for Respondent David S. Chase, do hereby certify that on
September 13, 2004, a copy of **Respondent's Motion to Stay Hearing Pending Conclusion of
Federal Criminal Case** was served by facsimile and U.S. Mail to:

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